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Attorneys for Bank of Montreal, as Administrative Agent

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION**

BANK OF MONTREAL, as Administrative  
 Agent,

Plaintiff

v.

SK FOODS, LLC

Defendant.

Case No. 11-CV-80133 MISC - EJD (HRL)

BANK OF MONTREAL'S REPLY TO RESPONSE OF  
 RESPONDENTS SK PM CORP., FREDERICK  
 SCOTT SALYER, AS TRUSTEE FOR THE SCOTT  
 SALYER REVOCABLE TRUST, AND FREDERICK  
 SCOTT SALYER TO ORDER TO SHOW CAUSE  
 WHY JUDGMENT SHOULD NOT BE AMENDED

v.

SK PM CORP. and FREDERICK SCOTT  
 SALYER, as Trustee for the Scott Salyer  
 Revocable Trust, FREDERICK SCOTT  
 SALYER, in his Individual Capacity

Respondents.

Honorable Edward J. Davila

Place: Robert F. Peckham Federal Building  
 280 South 1st Street  
 San Jose, CA 95113

Due the glaring omission in the Response of Respondents SK PM Corp., Frederick  
 Scott Salyer, as Trustee for the Scott Salyer Revocable Trust, and Frederick Scott Salyer to

REPLY TO RESPONSE OF RESPONDENTS  
 11-CV-80133 MISC - EJD (HRL)

1 Order to Show Cause Why Judgment Should Not be Amended (the “*Response*”), Plaintiff,  
2 Bank of Montreal, as Administrative Agent for certain Lenders (“*BMO*” or the “*Agent*”),  
3 submits this Reply to the Response, and respectfully states as follows:

4 Respondents argue that the Court’s Order to Show Cause Why Judgment Should Not  
5 be Amended (the “*Show Cause Order*”) should be set aside and this matter stayed pending Mr.  
6 Salyer’s sentencing because Mr. Salyer intends to continue asserting his Fifth Amendment  
7 Right until he is sentenced which, “deprives Respondents of the ability to mount their defense  
8 (as has already been found by the Eastern District and Eastern Bankruptcy courts).” Response  
9 at p. 3. The Respondents, however, fail to inform the Court that the Honorable Judge  
10 Lawrence K. Karlton, the judge overseeing Mr. Salyer’s criminal trial, recently rejected that  
11 argument. *See* Exhibit 1, attached to the Request for Judicial Notice in Support of Reply filed  
12 concurrently herewith (“*RJN*”).

13 As the Respondents previously informed this Court, the United States Bankruptcy  
14 Court for the Eastern District of California issued orders in June 2011, staying various  
15 adversary proceedings pending before that court, many of which included the Respondents as  
16 defendants. *See* Docket No. 40. Those orders were appealed to Judge Karlton in the United  
17 States District Court for the Eastern District of California. Judge Karlton recently order the  
18 stays vacated stating, “although the [criminal] case is still pending, with sentencing to be  
19 determine,” the facts no longer warranted a stay. *RJN*, Ex. 1. As in the Eastern District, there  
20 is no justification to stay this proceeding pending Mr. Salyer’s sentencing.

21 The Respondents also argue the matter should be stayed as a result of the withdrawal of  
22 their counsel Farella Braun + Martel LLP (“*FBM*”). Response at p. 4, fn. 1. This withdrawal,  
23 however, is not a surprise to Respondents as FBM has been moving to withdraw from  
24 representing them in various matters since April. *BMO* even sent a letter to *FBM* in April  
25 requesting confirmation of whether they were going to withdraw in this matter as well as the  
26

1 identity of new counsel. *See* Docket No. 49. Respondents should not be allowed to use this  
 2 tactic to gain further delay.<sup>1</sup>

3 The remaining arguments in the Response should be rejected by the Court as they are  
 4 merely a rehashing of their prior arguments or defenses Respondents could have raised  
 5 previously. Respondents do not even attempt to explain how they were unable to present these  
 6 defenses earlier as directed by this Court in the Show Cause Order. BMO, however, reserves  
 7 the right to submit a substantive response to the defenses raised by the Respondents, should the  
 8 Court request additional briefing.

9 Dated: June 15, 2012

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 James M. Heiser  
 CHAPMAN AND CUTLER LLP

13 /s/ Todd J. Dressel

14 Todd J. Dressel  
 Attorneys for Bank of Montreal

25 <sup>1</sup> BMO notes this is the same delay tactic used by Respondents earlier in this matter when FBM became  
 26 counsel to the Respondents; defendant SK Foods LLC, in the Chicago Litigation; as well as by  
 27 Respondents in the various matters pending in the Eastern District.